

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

<b>IN RE:</b>	)	
	)	
<b>TESSA RENAE COLCLOUGH</b>	)	<b>C.A. Number: CPU4-10-002792</b>
	)	
<b>TO</b>	)	<b>Petitioner's D.O.B. 09/22/2009</b>
	)	
<b>TESSA RENAE PERSONTI</b>	)	<b>CHANGE OF NAME</b>

Jennifer A. Personti  
139 Council Circle  
Newark, DE 19702  
*Petitioner Pro-se*

Robert C. Colclough  
53A Highland Boulevard  
Scotch Hills Apartments  
New Castle, DE 19720  
*Respondent Pro-se*

**MEMORANDUM OPINION AND ORDER ON PETITION FOR NAME CHANGE OF  
TESSA RENAE COLCLOUGH TO TESSA RENAE PERSONTI**

Submitted: June 07, 2010  
Decided: June 25, 2010

**DAVIS, J.**

On June 7, 2010, an evidentiary hearing was held in the Court of Common Pleas on the Petition for Name Change of Tessa Renae Colclough to Tessa Renae Personti (the "Petition"). Following the hearing, the Court reserved decision. This is the Court's Memorandum Opinion and Order in connection with the Petition.

## **I. Background**

### **a. Introduction and Procedural History**

Tessa Ranae Colclough ("Tessa") was born on September 22, 2009 in Newark, Delaware. Jennifer A. Personti ("Jennifer") is the natural mother of Tessa. The natural father of the child is Robert C. Colclough III ("Robert").

On or about April 21, 2010, Jennifer filed the Petition, seeking to change the name of Tessa from Tessa Ranae Colclough to Tessa Renae Personti. Robert had notice of and appeared at the hearing to oppose the Petition. Robert did not submit any written objection to the Petition.

Notice of the Petition was published in the News Journal Newspaper in New Castle County, once a week for three weeks prior to filing of the Petition – specifically on December 8, 15, and 22, 2009.

### **b. Additional Relevant Facts**

On June 7, 2010, the Court held an evidentiary hearing on the Petition. At the hearing, the Court considered the Petition and all attachments and notices. The Court also heard testimony regarding the Petition from Jennifer, Robert, maternal grandmother Annette Derocili ("Annette") and paternal grandmother Carolyn Colclough ("Carolyn"). Jennifer and Annette testified in support of the Petition. Robert and Carolyn testified in opposition to the Petition.

In the Petition, Jennifer states that she was seeking to have Tessa's name changed because Robert "chooses not to be involved with [Tessa] and [Robert's] name is not on birth certificate."<sup>1</sup> Jennifer certified in the Petition that there are no creditors or other persons who will be defrauded or adversely affected if the name change is granted. Tessa is an infant and the Petition also set forth that Tessa has no pending criminal charges, is not on probation or parole

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<sup>1</sup> Petition at ¶ 3.

and is not required to register with the Delaware State Police or any other governing authority in any jurisdiction.

As multiple witnesses testified, Robert was present in the hospital on or about the time of Tessa's birth. While present at the hospital, Jennifer and Robert both testified that Robert initially denied paternity. Specifically, Jennifer testified that Robert refused to sign an acknowledgment of paternity. For that reason, Jennifer testified that Robert's name was not included on Tessa's birth certificate.<sup>2</sup>

Robert is unemployed and admitted he does not provide any monetary child support or assistance for Tessa's care. Moreover, no evidence was adduced at the hearing that Robert would be able to provide regular child support for Tessa's care in the immediate future. Jennifer testified that during the eight months between Tessa's birth and the filing of the Petition, Robert brought diapers to Tessa on three occasions. The evidentiary record demonstrates that Robert has provided this minimal support only upon request.

Presently, Tessa lives with Jennifer and Jennifer's son. Jennifer testified that her son is not related to Robert. No other adult resides with Jennifer.

There is no evidence in the record demonstrating a regular pattern of visitation by Robert. At the time of the hearing, no court in Delaware had issued an order controlling custody of Tessa. Jennifer indicated she recently filed a custody petition in the Family Court of the State of Delaware.<sup>3</sup> The record indicates that the Family Court has not yet had an opportunity to address or otherwise adjudicate the custody petition. Robert testified that he was not, at the time, seeking

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<sup>2</sup> See Certification of Birth of Tessa Renae Colclough dated October 9, 2009, a copy of which is attached to the Petition.

<sup>3</sup> Jennifer filed a petition for custody of Tessa Ranae Colclough on June 7, 2010 in Family Court. The petition is not scheduled to be addressed until the end of July 2010, when the case is scheduled for mediation.

custody of Tessa. Jennifer testified that there are presently court orders in place requiring that Jennifer and Robert have no contact with each other.

Jennifer testified that Tessa has been using the name Tessa Colclough since birth. Moreover, Jennifer stated that Tessa uses the name Tessa Colclough at Tessa's daycare provider and with her pediatrician. However, Jennifer also testified that she did not believe that there would be any confusion with these parties or others as a result of granting the Petition.

Annette testified in support of the Petition. Annette testified that she did not know whether Robert ever denied paternity. Annette also stated that Robert has not provided any monetary child support for Tessa. Annette went on to testify that Tessa and Jennifer lived with Annette in the months following Tessa's birth. Annette stated that Robert would visit Jennifer and Tessa on occasion but that the visitation was not on a regular basis.

Robert testified that he visited Tessa as often as possible. Robert confirmed that he has not provided any monetary child support for Tessa. Robert did indicate a willingness to do so in the future.

Robert claimed he was opposing the Petition because (i) the name change will prevent him from visiting Tessa in the future and (ii) confusion will result if Tessa has her name changed from Colclough to Personti. While not being able to articulate a specific fact in support, Robert testified that he believed that the Personti family would not allow him to visit Tessa once her name was changed. In support of his confusion claim, Robert asserted that Tessa looks like him and others in the Colclough family. As such, Robert testified that if Tessa did not retain the Colclough name it would create confusion in the community when Tessa used the Personti name instead of Colclough.

Carolyn also testified in opposition to the Petition. Carolyn testified that she is proud of Tessa as a Colclough and would like to have the last name honored. Carolyn also stated that her son, Robert, has had problems with Jennifer and, if the name change is granted, Carolyn believes Jennifer will try to alienate Robert from Tessa.

The Court attempted to elicit a more detailed explanation from Robert and Carolyn as to how visitation and custody will be affected if the Court grants the Petition; however, no additional facts were provided.

## II. Applicable Law

This matter is governed by 10 *Del. C.* § 5901 *et seq.* and Court of Common Pleas Civil Rule 81(c). The applicable statute and rules require that the petition be signed by at least one of the minor child's parents and that notice of the petition be published at least once a week for 3 weeks before the petition is filed.<sup>4</sup> The Court may grant a petition for name change if all the statutory requirements are met and there are no apparent reasons for not granting the petition.<sup>5</sup>

The Court has adopted the "best interests of the child standard" when determining whether to grant a petition for a name change of a minor child.<sup>6</sup> What constitutes the best interests of the child involves a factual analysis involving the relationship and family structure of the minor.<sup>7</sup> Under this standard, the Court considers the following factors:

1. A parent's failure to financially support the child;
2. A parent's failure to maintain contact with the child;
3. The length of time that a surname has been used for or by the child;
4. Misconduct by one of the child's parents;
5. Whether the surname is different from the surname of the child's custodial parent;

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<sup>4</sup> 10 *Del. C.* § 5902 – 5903.

<sup>5</sup> 10 *Del. C.* § 5904.

<sup>6</sup> *In Re: Change of Name of Walter to Coffin*, CCP, C.A. No. 1998-06-222, Fraczkowski, J. (Sept. 30, 1998); *In Re: Change of Name of Evans to Brown*, CCP, C.A. No. 1998-10-147, Welch, J. (Mar. 11, 1999).

<sup>7</sup> *See, In re Change of Name of James Roy Runyon, Jr. to James Roy McGarrity*, Del. CCP C.A. No. 1999-06-185, Smalls, C.J. (August 13, 1999).

6. The child's reasonable preference for a surname;
7. The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
8. The degree of community respect associated with the child's present surname and proposed surname;
9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;
10. The identification of the child as a part of the family unit.<sup>8</sup>

### III. Discussion

Based upon the evidence presented at the hearing, the Court finds that the factors in support of granting the Petition outweigh the factors against granting the Petition. Accordingly, the Court holds that it would be in the best interest of Tessa to have her name changed from Tessa Ranae Colclough to Tessa Renae Personti.

The following analysis of the factors was used in reaching the Court's decision:

*A parent's failure to financially support the child.* Robert admittedly does not pay any child support for Tessa and does not have any immediate prospect for being able to properly provide child support. The testimony is clear that Robert only provides minimal support of necessities after he has been asked. This factor supports granting of the Petition.

*A parent's failure to maintain contact with the child.* Testimony at the hearing on the Petition revealed that Robert had maintained contact with Tessa by occasionally visiting Tessa and Jennifer. At the time of the hearing, Jennifer stated that she and Robert had no contact orders against each other. Due to the no contact order, it would be difficult for Robert to arrange for visitation with Tessa. However, the Court does find that Robert makes attempts to visit Tessa and wants to maintain contact Tessa in the future. Therefore, the Court considers this factor to be neutral in determining the best interests of the child.

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<sup>8</sup> *Id.*

*The length of time that a surname has been used for or by the child.* The surname Colclough has been used by Tessa for less than one year. Due to the relatively short amount of time that the surname has been used by the child, the Court considers this factor to be neutral in determining the best interests of the child.

*Misconduct by one of the child's parents.* The parties did not present any evidence at the hearing concerning misconduct by either Jennifer or Robert. Therefore, the Court considers this factor to be neutral in determining the best interests of the child.

*Whether the surname is different from the surname of the child's custodial parent.* While there is no court order determining custody, the Court concludes from the testimony that Jennifer, whose last name is Personti, has custody of Tessa. Moreover, Robert testified at the hearing that he is not going to dispute this custody. Because Jennifer has custody, this factor weighs in favor of granting the petition.

*The child's reasonable preference for a surname.* Tessa is less than one year old. This factor is irrelevant under these facts.

*The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent.* Given the relationship between Robert and Jennifer, the Court examined whether a name change would affect the relationship between Tessa and Robert.<sup>9</sup> On this factor, Robert and Carolyn testified that they believed that Robert would be shut out of Tessa's life by Jennifer and the Personti family if the name change is granted. Without more than a mere "belief," however, the Court cannot agree with Robert and Carolyn that the name change will prevent Robert from exercising his rights, and obligations, as Tessa's father. The petition pending in Family Court should determine Robert's custody and visitation rights, as well as his obligations to provide child support. Jennifer and the rest of the Personti

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<sup>9</sup> *Degerberg v. McCormick*, 187 A.2d 436, 439 (Del. C. 1963).

family will have to abide by these determinations. If not, Robert will be able to enforce his rights as the father of Tessa. The name change should, therefore, only affect Robert's personal and paternal relationship with Tessa if he allows that to happen. For those reasons this factor is considered neutral in determining the best interests of the child.

*The degree of community respect associated with the child's present surname and proposed surname.* Robert testified that the surname Colclough is widely known and respected in the community due to the large number of Colcloughs living in the Delaware area. No specific facts were presented to verify this claim. Jennifer did not justify the requested name change based on community respect associated with the proposed surname – Personti. This factor was not given much weight by the Court and is considered neutral in determining the best interests of the child.

*The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name.* Jennifer, who has custody of Tessa, testified that she did not believe that there would be any confusion created by a name change. Jennifer specifically stated that she did not believe third parties like Tessa's day care provider and her pediatrician would have any difficulties if Tessa's name were changed from Colclough to Personti. In opposition, Robert contends that a name change "would create total confusion" because Tessa looks like him and therefore needs his surname. The Court does not find Robert's reasoning helpful to the analysis. As such, the Court finds no credible evidence that a change in Tessa's surname would create any difficulty or confusion for her or the community. Therefore, this factor supports the granting of the Petition.

*The identification of the child as a part of the family unit.* The testimony indicates that the most constant family unit in Tessa's life is Jennifer, Jennifer's son and Tessa. The Court did

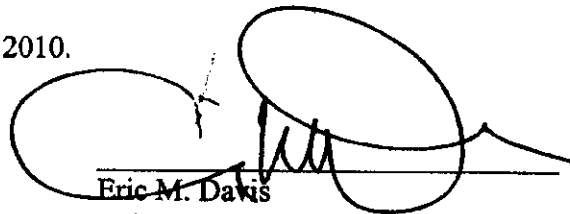


not receive any evidence indicating that Robert is part of the family unit involving Tessa other than those times he enjoys visitation with her. The Court believes this factor weighs slightly in favor of granting the Petition.

#### **IV. Conclusion**

Analysis of these factors leads the Court to find that the factors in support of granting the name change outweigh the factors against granting the name change and it is in the best interests of the child to change the name from Tessa Ranae Colclough to Tessa Renae Personti.

**IT IS SO ORDERED** this 25<sup>th</sup> day of June, 2010.



Eric M. Davis  
Judge